

Memorandum

To : ALL STANDARDS BOARD MEMBERS

Date : July 10, 2000

From : Occupational Safety and Health Standards Board
Michael J. Manieri Jr., Senior Engineer-Standards

Subject : Marine Terminals

The following information is provided in regard to the proposed revisions to the California Code of Regulations, Title 8, Chapter 4, Subchapter 7, Article 14, Sections 3465(a), 3472, and 3475 of the General Industry Safety Orders (GISO).

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH OVERVIEW

The Board intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated revisions to regulations addressing Longshoring and Marine Terminals on July 25, 1997, as 29 Code of Federal Regulations, Parts 1910, 1917 and 1918. The Board is relying on the explanation of the provisions of the federal regulations in the Federal Register, Volume 62, No. 143, pages 40142-40234, Friday July, 25, 1997 as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulation except for editorial and format differences.

As a result of a side-by-side code comparison of the State and Federal Longshoring Marine Terminal standard performed by Board staff on September 20, 1997 and Federal OSHA's review of the code comparison, Board staff determined that with the exception of two issues not addressed by Title 8, California's regulations were at least as effective as their Federal counterpart regulations.

Board staff's proposal consists of a proposed amendment to Section 3465 to address the design, construction and maintenance of dockboards in a manner which will prevent vehicles from running off the edge, which is verbatim of 29 CFR 1917.124(c)(5). It is also proposed to amend Section 3472 to require installation of a seat (lap) belt, meeting the requirements of 49 CFR 571.208-210 for a Type 1 seat belt, in the operator's seat of high speed container gantry cranes where the seat trolleys, which is verbatim of 29 CFR 1917.45(f)(5)(ii). High speed container gantry cranes are capable of hoist speeds of 360 feet per minute without a load, and trolley speeds of 500 feet per minute. The seatbelt is necessary to prevent the crane operator from falling out of the operator's seat and losing control of the crane when the seat is in motion.

This proposed rulemaking action also contains a minor nonsubstantive revision to Section 3475. This nonsubstantive revision is not discussed in this Informative Digest. However, the proposed revisions are clearly indicated in the regulatory text in underline and strikeout format.

The proposed regulations are substantially the same as the final rule promulgated by federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(4)(C). The regulations may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENTS RELIED UPON

1. Letter to Federal OSHA Region IX, dated August 1, 1999 from the Occupational Safety and Health Standards Board (OSHSB).
2. Letter to Federal OSHA Region IX dated August 8, 1997 from the OSHSB.
3. 62, Fed Reg, 40142-40234 (July 25, 1997).

These documents are available for review during normal business hours at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California, 95833.

COST ESTIMATES OF PROPOSED ACTION

According to the Federal Register, Vol. 62, No. 143, Friday July 25, 1997, Preamble, Section C, The Final Standards and Their Estimated Costs, federal OSHA estimates the total annualized costs for CFR 1917.124(c)(5), Dockboards estimated by final economic analysis to be \$139,955

and the estimated annual cost of the final rule for seatbelts mandated by 29 CFR 1917.45 (f)(5)(ii) to be \$17,537.

California's share of the national cost of complying with 29 CFR 1917.45(f)(5)(ii) and 1917.124(c)(5) is approximately 28%. This figure is based on a telephone conversation with a representative from the Pacific Maritime Association (PMA) who indicated that based on PMA data, California's civilian marine terminal labor force of approximately 7,000 workers is approximately 28% of the national civilian marine terminal labor force. When compared to the total marine terminal operation costs in California (estimated to be in the tens of millions of dollars annually), the cost to comply with the federal requirements stated above is insignificant.

Furthermore, during a May 18, 2000 conversation with a PMA representative, Board staff learned that practically all new and late model high speed bridge cranes are already equipped with a seatbelt in the operator's seat. Also, almost all dockboards are designed with sideboards designed to prevent a vehicle from running off the edge of the dockboards. The proposed requirements are consistent with industry practice and are therefore not expected to impose an adverse economic impact upon California's marine terminal industry/longshoring industry.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." The proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in this notice. The informative digest for this proposal constitutes a plain English overview.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No alternatives considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Attachments